

REMARKS

Favorable reconsideration of this application is requested in view of the above amendments and the following remarks. Claims 1, 10, 14-16 and 20 are amended and claim 22 is newly added. Claims 1-22 remain actively pending in the case. No new matter has been added. Reconsideration of the claim is respectfully requested.

Specification

Applicant has amended the Specification to reflect the patent (U.S. Patent No. 6,278,686) granted from U.S. S/N 08/952,331. Applicant respectfully submits that no new matter has been added.

35 USC § 112 Rejections

In paragraph 2 on page 2 of the Office Action, claim 10 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. However, in paragraph 7 on page 5 of the Office Action, claim 10 would be allowable if rewritten to overcome the rejection under 35 U.S.C. 112, second paragraph, as set forth in the Office Action and to include all of the limitations of the base claim and any intervening claims.

Applicant respectfully traverses the rejection but in the interest of prosecution has amended claim 10 as suggested by the Examiner. Also, Applicant has newly added independent claim 22 which incorporates the limitations of amended claim 10.

Therefore, in view of the above remarks, Applicant respectfully submits that claim 10 and new independent claim 22 are allowable and requests that Examiner withdraw the rejection.

35 USC § 102(e) Rejection

In paragraph 4 on page 3 of the Office Action, claims 1-7, 9 and 11-21 were rejected under 35 USC § 102(e) as being anticipated by Malkamaki (WO 98/02982). Applicant respectfully traverses the rejections.

Applicant respectfully asserts that these rejections are improper since Malkamaki, and also Susuki, cannot be applied under 35 U.S.C. § 102(e). The Examiner is referred to the

"Examination Guidelines for 35 U.S.C. § 102(e)(2), as amended by the American inventors Protection Act of 1999" issued by the Patent and Trademark Office. In those Guidelines, it is stated, under the first paragraph of the Summary, that the criteria for determining patentability under pre-AIPA § 102(e) applies to applications filed before November 29, 2000 and not voluntarily published according to 35 U.S.C. § 122(b). The Guidelines further state that the new criteria for determining patentability under post AIPA 35 U.S.C. § 102(e) applies to applications: a) filed on or after November 29, 2000, or b) that have been voluntarily published.

Applicant's application was filed in the United States on October 10, 2000, having a priority date of April 10, 1998 (PCT WO 99/53644). Therefore pre-AIPA § 102(e) applies to the present application, not post-AIPA § 102(e).

Under pre-AIPA § 102(e), a reference is a patent granted on an application for a patent by another filed in the United States before invention by the Applicant. Thus, only US patents may be used as references under the pre-AIPA 35 § 102(e). Therefore, the Malkamaki and Susuki references are not available as a reference under 35 U.S.C. § 102(e). However, if Malkamaki and Susuki can be rejected under another section of 35 U.S.C. § 102, our arguments follow.

Malkamaki fails to disclose or suggest a cellular radiotelephone signal including at least one additional channel solely assigned to downlink, with no corresponding symmetrical uplink channel as recited in Applicant's independent claims. Rather, Malkamaki merely discloses mobile communications arranged to transmit encoded data in accordance with a first protocol and to transmit extended data in accordance with a second protocol. The second transmitting means is arranged to transmit extended data using TDMA, preferably at a high rate. Moreover, Malkamaki discloses that the structure of the signal is totally symmetrical. (see page 8, lines 25-31). Thus, nothing in Malkamaki can lead persons skilled in the art to think of an asymmetrical repartition of the resources.

In contrast, Applicant's invention includes at least one additional channel solely assigned to downlink, with no corresponding symmetrical uplink channel, providing in particular high speed data transmission. Hence, according to Applicant's invention, an asymmetric distribution of the transmission resource is proposed. In Applicant's invention, in addition to the traditional symmetrical bidirectional channel of a radiotelephony system including a main uplink and a main downlink, an additional channel is assigned to the downlink only (with no corresponding symmetrical uplink channel) and dedicated (devoted) to high speed data transmission.

Therefore, in view of the above remarks, Applicant's independent claims 1, 14-16, 20 and 22 are patentable over the cited reference.

35 USC § 103 Rejection

In paragraph 6 on page 4 of the Office Action, dependent claim 8 was rejected under 35 USC § 103(a) as being unpatentable over Malkamaki (WO 98/02982) in view of Suzuki (EP 786890 A2). Applicant respectfully traverses this rejection.

As discussed above, Malkamaki fails to disclose or suggest Applicant's invention. Suzuki fails to remedy the deficiencies of Malkamaki as Suzuki fails to disclose or suggest a cellular radiotelephone signal including at least one additional channel solely assigned to downlink, with no corresponding symmetrical uplink channel as recited in Applicant's independent claims.

Therefore, in view of the above remarks, Applicant's dependent claim 8 is patentable over the cited references.

Because claims 2-13, 17-19 and 21, which depend directly or indirectly from claims 1, 16 and 20 respectively, include the features recited in the independent claim as well as additional features, Applicant respectfully submits that claims 2-13, 17-19 and 21 are also patentably distinct over the cited references. Nevertheless, Applicant is not conceding the correctness of the Office Action's rejection with respect to such dependent claims and reserve the right to make additional arguments if necessary.


Conclusion

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at 612/336-4755.

Respectfully submitted,

MERCHANT & GOULD P.C.
P.O. Box 2903
Minneapolis, Minnesota 55402-0903
(612) 332-5300

Date: 1/8/03


John J. Giesens
Reg. No. 33,112

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